IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2006

CORAM

THE HON'BLE MR. JUSTICE V. DHANAPALAN

W.P. No.8178 of 2004 & W.P.M.P. No.9642 of 2004

Indian Refrigerator Company Limited
Represented by its authorized signatory
Mr. S. Balakrishnan
Plot No.72, Phase I
SIPCOT Industrial Complex
Hosur, Krishnagiri District - 635 126 ..Petitioner

vs.

1. The Commissioner (Appeals)
Chennai III Commissionerate
26/1, Mahatma Gandhi Road
Chennai - 600 034

2. The Assistant Commissioner of Central Excise
Hosur II Division
67/A, SIPCOT
Hosur, Krishnagiri District - 635 126 ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari as stated therein.

For petitioner Mr. J. Ashok

For respondents Mr. K. Ramakrishna Reddy, SCGSC

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O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. This writ petition arises out of the interim order No.04/01/2004 dated 23.01.2004 passed by the first respondent in Appeal No.92 of 2003 under Section 35F of the Central Excise Act, directing the petitioner to pre-deposit a sum of Rs.17,00,000/- during the pendency of the appeal.

3. The case of the petitioner Company, in brief, is as under:

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a. The petitioner Company, viz., Indian Refrigerator Company Limited (in short "I.R.C.L.") is in the business of manufacture of electronic consumer goods such as colour television, washing machines, refrigerators, mixer grinders, compressors and parts thereof and for manufacturing those goods, it buys the unassembled parts in SKD condition from Videocon Appliances Limited, Aurangabad and Applicom India Limited, Attapalli and sells the finished goods to Videocon International Limited for the purpose of marketing.

b. Videocon International Limited, keeping in mind the twin object of meeting out the competition and promotion of sales, placed on the order of combi-pack in the combination of refrigerator with mixer grinder from Videocon International Limited on the I.R.C.L. based on which I.R.C.L. placed order with and received the parts and accessories of both refrigerator and mixer grinder and also the equal number of wire and cord from Videocon Appliances Limited. After manufacturing the finished goods, I.R.C.L. cleared them from its factory in the declared combination of MRP thereby paying duty for the same and availed CENVAT credit towards duty paid on the inputs. Since the second respondent, vide his order dated 09.07.2003, observed that I.R.C.L. had taken credit wrongly on the mixer grinder as parts of refrigerator and disallowed the credit of Rs.17,07,972/- and also imposed a penalty of Rs.3,50,000/- under Rule 13 of the CENVAT Credit Rules, 2001, the petitioner preferred an appeal with the first respondent who passed an interim order directing I.R.C.L. to pre-deposit the sum of Rs.17,000,000/-. As against this order of the first respondent, the present writ petition.

4. In response, the second respondent, by filing his counter affidavit, contested the case stating that I.R.C.L. received the mixer grinders in SKD condition which were declared as parts of refrigerators from Videocon Appliances Company Limited and took credit on the SKD mixer grinders which were declared as parts of refrigerators and then, declared both the refrigerators and mixer grinders as a combi pack declaring one MRP for both the items.

5. Mr. J. Ashok, learned counsel for I.R.C.L., while assailing the allegation of the second respondent that mixer grinders in the combi-pack were not assessed under Section 4A of the Central Excise Act, 1944 (under MRP), would place reliance on the Circular dated 28.10.2002 issued by the Under Secretary to Government of India (Central Excise, Department of Revenue) which says that if the individual items comprising the multi-pack have clear markings that they are not to be sold separately or packed in such a way that they cannot be sold separately, then, the MRP indicated on the multi-pack could be considered for payment of duty under Section 4A of the Central Excise Act, 1944. It is his contention that since the declaration "to be sold along with the refrigerator model no…. not for retail sale" was affixed on the combi-pack, the allegation of the second respondent cannot be sustained. In short, it is his earnest submission that the order of the first respondent directing I.R.C.L. to pre-deposit a sum of Rs.17 lakhs has to be quashed.

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6. On the other hand, Mr. K. Ramakrishna Reddy, learned SCGSC appearing for the respondents would contend that though the finished mixer grinders were cleared in combination with refrigerators, they were shown as parts of refrigerators which cannot be sustained and hence, the said Circular relied on by the counsel for the petitioner cannot come to his rescue. Mr. Ramakrishna Reddy would further contend that the first respondent is correct in his conclusion that the mixer grinders cannot be used in the manufacture of refrigerators and such a conclusion was arrived at only on I.R.C.L.'s mis-declaration wherein mixer grinders in dis-assembled condition were declared as parts of refrigerators and as such, the order of the second respondent which is confirmed by the first respondent by way of an interim order, is perfectly in accordance with law and the writ petition has to be dismissed.

7. Heard both sides.

8. The learned SCGSC has brought to the notice of this Court, a decision of the High Court of Delhi in the case of Jaypee Rewa Plant vs. Union of India & others reported in 2005 (71) RLT 701 (Del.) in which, while dealing with the matter of pre-deposit under Section 35F of the Central Excise Act, 1944, it was observed as under:

> "All that the Tribunal was required to do was to determine whether on a *prima facie* appreciation of the facts attendant upon the case and the available material, there was any justification for waiving the pre-deposit *in toto*. The impugned order of the Tribunal does examine that aspect and record a finding that having regard to the facts of the case and the nature of the items on which the credit had been claimed, it was not a fit case in which duty could be waived *in toto*. What is significant is that the petitioner had not claimed any financial or other hardship either before the Tribunal or before us in support of its prayer for a total waiver of the duty. In the absence of any such claim and keeping in view, the language employed in the *proviso* to Section 35F, a waiver of 50% of the duty amount sufficiently served the interest of justice. We, therefore, see no reason to interfere. This writ petition fails and is hereby dismissed."

9. Challenging the above order, the petitioner before the Delhi Court filed a SLP to Civil Appeal No.26458 of 2005 before the Supreme Court and it was dismissed and the only relief got by the petitioner was nothing but the extension of two weeks time for making deposit.

10. As the decision of the High Court of Delhi which is confirmed by the Supreme Court is squarely applicable to the case on hand and since I find a force in the argument advanced by the learned SCGSC that the mixer grinders cannot be shown as parts of refrigerators as done by I.R.C.L., I hold that the impugned interim order passed by the first respondent is perfectly in order

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and warrants no interference by this Court in any manner whatsoever and accordingly, the writ petition fails and stands dismissed. Consequently, connected W.P.M.P. is closed. However, the petitioner is given a period of eight weeks from the date of receipt of a copy of this order for pre-depositing the duty amount of Rs.17,00,000/- as directed by the first respondent. There is no order as to costs.

cad

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar.

To

1. The Commissioner (Appeals)
   Chennai III Commissionerate
   26/1, Mahatma Gandhi Road
   Chennai - 600 034

2. The Assistant Commissioner of Central Excise
   Hosur II Division
   67/A, SIPCOT
   Hosur, Krishnagiri District - 635 126

+ 1 C.C. to Mr.K.Ramakrishna Reddy, Advocate (SR.No.49680)

+ 1 C.C. to Mr.J.Ashok, Advocate (SR.No.49668)

RL (CO)
VA(14.12.2006)

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